Court No.2

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 161 of 2002 (M/S)

Mr. Ravish Kumar
S/o late Som Dutt Kirtipal,
R/o Mohalla Kutti Maran
Near Sub Post Office,
Jwalapur, District-Haridwar.

..... Petitioner

versus

1. S.D.M. Asstt. Collector, Haridwar,

2. Assistant Registrar, Firms Societies and Chits, Dehradun,

3. Shri Virender Kirtipal S/o late Chand Mal, R/o Krisipal Street, Jwalapur, District Haridwar.

4. Shri Ashok Kumar Tumbariya S/o late Hari Chand Tumbariya, R/o Old Ghas Mandi, Jwalapur,

5. Sh.Manikant Angarsodia S/o Nathu Ram, R/o Kirtipal Street Near Sub Post Office, Jwalapur, District-Haridwar.

6. Shri Som Dutt Dalal S/o late Hansraj Dalal, R/o Mohalla, Dalalan, Trithpurohit Opp. Laxmi Chand Purohit, Dharmshala, Jwalapur, District-Haridwar.

..... Respondents.

Sri L.P.Naithani, learned Sr.Advocate assisted by Sri Ram Ji Srivastava and Sri Sharad Sharma, learned counsel for the petitioner.
Learned Standing counsel for the respondent Nos. 1 & 2.
Sri Alok Singh, learned Sr.Advocate assisted by Sri Lalit Tewari, learned counsel for the respondent No.5.
Sri Pankaj Miglani, learned for the respondent Nos. 3, 4 & 6.

Date: March 7, 2006.

Hon'ble P.C. Verma, J.

This petition has been filed by the petitioner seeking writ of certiorari for setting aside the impugned order dated 18.04.2002 passed by respondent No. 1/ Prescribed Authority (under Section 25 of the Societies Registration act) Assistant Collector, Haridwar, contained in Annexure No.3 to the writ petition.

2. Brief facts of the case are that proceedings were initiated on the basis of the reference made by Assistant Registrar, Firms, Societies and Chits, Dehradun dated 10.1.2002. The dispute was referred on the appointment of two members of Sri Uddeshwar Mahadev Temple Dharmarth Trust Samiti, Haridwar. The president of the Trust Sri Som Dutt Kirtipal had expired on 06.9.1999 and due to resignation of Krishna Kumar Mishra, two vacancies of the trustees of the society occurred. According to the byelaws of the Society, there were 11 members of the Trust including President, Vice President, Secretary, Joint Secretary, Treasurer and 6 other members. It is also provided in the byelaws of the Society that the vacancy, if any, will be filled up by the legal heirs of the members of the Society. It is also mentioned in the byelaws that the yearly meeting will be held on the occasion of the *Shivratri* every year and in emergency the Secretary of the Trust with the approval of President can call a meeting at any time in the year.

3. With view to fill up the aforesaid two vacancies the Secretary of the Society has called a meeting in accordance with rule on 4.3.2000 and after proposing the name of Shri Ravish Kirtipal/petitioner and Sudhanshu Mishra voting was held both them became trustees of the said Society. The nomination was duly

approved by the management on 21.2.2001 and the respondent No.2/Assistant Registrar, Firms Societies and Chits was also intimated about their appointment as Trustees. After a long time the respondent No.5, who is the Joint Secretary of the society, in collusion with respondent No.6/Sri Som Dutt Dalal called a meeting on 4.6.2001, though he has no power to call the meeting and they illegally appoint to another members, namely, Ashok Kumar Tumbariya and Viernder Kirtipal, respondent Nos. 4 & 3 respectively. The respondent Nos. 5 & 6 has no power to call the meeting in view of clause 8 (ya) of the byelaws, therefore the meeting as well as the appointment of respondent Nos. 3 & 4 is contrary to the byelaws. It is also stated that the respondent Nos. 3 & 4 are also not the legal heirs of the earlier members, namely, Som Dutt Kirtipal and Krishna Kumar Mishra. The respondent No.6 has also participated in the meeting held on 4.3.2000 and 21.2.2001, which was convened by the Secretary and he was well aware of the fact that the petitioner as well as Sudhanshu Mishra have been appointed as Trustees in the Society. Due to aforesaid dispute of appointment the respondent No.2 called both the parties to verify the real fact and both the parties appeared before the respondent No.2 and the respondent No.2 after considering the affidavit filed by the parties recorded a detailed findings about the aforesaid dispute of appointment and he made the reference to the respondent No.1/ Prescribed Authority in view of Clause-1 of Section 25 of the Societies Registration Act. The respondent No.2/Assistant Registrar, Societies has categorically recorded his findings and stated in his order that the respondent No.5 has no authority to convene the

meeting as provided under the byelaws, therefore the alleged meeting dated 4.6.2001 is illegal and arbitrary. The respondent No.2 further stated in his order that as per the byelaws only legal heir of the trustee can be appointed as trustee of the aforesaid Society and in the instant case the respondent Nos. 3 & 4 are not the legal heirs of Sri Som Dutt Kirtipal and Krishna Kumar Mishra (earlier trustees) and they have wrongly been appointed as trustees. The respondent No.1/Prescribed Authority, vide his order dated 18.4.2002 held the appointment of respondent Nos. 3 & 4 legal and in accordance with law and the appointment of the petitioner as well as Sudhanshu Mishra is bad. Feeling aggrieved, the petitioner has come up in the writ petition.

4. The petitioner has challenged the impugned order dated 18.4.2002 passed by respondent No.1/Prescribed Authority-S.D.M. on the ground that respondent Nos. 5 & 6 had no power to convene the meeting in view of Clause 8 (ya) of the byelaws, therefore the meeting as well as the appointment of respondent Nos. 3 & 4 is contrary to the byelaws. The appointment of respondent Nos. 3 & 4 are illegal, arbitrary and against the byelaws because as per the byelaws only legal heirs of the trustees can be appointed as trustees of the aforesaid Society and in the instant case the respondent Nos. 3 & 4 are not the legal heirs of Som Dutt Kirtipal and Krishna Kumar Mishra (earlier Trustees). The finding recorded by the respondent No.1 that the appointment of the petitioner and Sudhanshu Mishra is bad as the father of the petitioner has tried to grab the property of the trust, is without any evidence and contrary to the byelaws.

5. The petitioner also filed supplementary affidavit in which it is asserted that all the 7 members, who attended the meeting held on 4.3.2000, have approved the appointment of the petitioner as trustee of the aforesaid Society because he is legal heir of the earlier member/President-Som Dutt Kirtipal. The said proposal was confirmed by the management in the next meeting which was held on 21.2.2001 on the day of *Shivratri* as prescribed in the byelaws. The respondent No.6 who is the Vice President in the earlier meetings dated 4.3.2000 and 21.2.2001 with collusion of the respondent No.5 who is the Joint Secretary of the Society, without any authority convened the meeting on 4.6.2001. The said meeting was held behind the back of the petitioner as well as other members. The respondent Nos. 5 & 6 alongwith some other members appointed respondent Nos. 3 & 4 as members of the Society, though they are not legal heirs of the earlier members.

6. A counter affidavit has been filed on behalf of respondent Nos. 3 to 6 in which it is asserted that the meeting dated 4.3.2000 in which the petitioner was appointed as member, in fact had not taken place. Rather it was an attempt after thought by the petitioner in connivance with one Sri Narendra Kirtipal, the then Secretary of the Society so that the petitioner as well as Sri Narendra Kritipal can grab the property of the Society. The agenda of the meeting dated 4.6.2001, by which the respondent Nos. 3 & 4 were appointed as the trustees was filed before the respondent No.2 on 31.5.2001 and the minutes of the meeting dated 4.6.2001 were filed on 11.6.2001 before the respondent No.2, whereas the minutes of the alleged meeting dated

4.3.2000 were filed on 26.6.2001 i.e. after the submission of the minutes of the original meeting. It is also asserted that in the meeting dated 21.2.2001 one Sri Shiv Prasad Vidyakul was appointed as a President of the Society but Sri Shiv Prasad Vidyakul had submitted his affidavit before respondent No.2 that he had neither attended any meeting nor he was appointed as a President at any point of time. Hence the meeting dated 4.3.2000 as well as that of 21.2.2001 are fake and the minutes of these two meetings were forged and fabricated. It is also asserted that in fact the respondent Nos. 3 & 4 were appointed as the member trustees of the society in the meeting dated 4.6.2001. Thereafter respondent No.1 passed the order dated 18.4.2002 holding the appointment of respondent Nos. 3 & 4 as valid and the answering respondents thereafter got there body registered on 20.4.2002 before the respondent No.2 and since then they are working for the benefit and welfare of the Society.

7. The assertions made in the supplementary affidavit have also been denied by the respondent Nos. 3 to 6 by filing the supplementary counter affidavit.

8. The respondent Nos. 1 & 2 in their joint counter affidavit have alleged that Sri Som Dutt Kirtipal and Sri Shiv Prasad Vidyakul on oath denied that no meetings were arranged and convened on 4.3.2000 as well as on 21.2.2001 before them and their signatures in the proceeding register of the meeting are fictitious.

9. In the rejoinder affidavit filed by the petitioner it is stated that the respondent No.6 was present alongwith other members in the meeting dated 4.3.2000 which was later on approved on 21.3.2001 and they have

made their signatures in the register and the signatures of Shir Prasad Vidyakul, Som Dutt Dalal and Sudhanshu Mishra were sent to the handwriting expert which were found correct. It is also stated that Sri Narendra Kumar Kirtipal, Kesho Ram Kirtipal, Om Prakash Kirtipal and Manikant Vidyakul, all members of the Society, have also filed their affidavits before the respondent No.2/Assistant Registrar, Societies stating therein that the meeting was held on 4.3.2000 and which was approved on 21.3.2001 in their presence.

10. On 18.7.2005 at the time of hearing in the writ petition, the learned counsel for the parties brought to the notice of the Court that a Civil Suit bearing No. 138 of 2002, *Sri Uddeshwar Mahadev Mandir Dharmarth Trust Samiti and another versus Manikant Angarsodia and others* claiming same relief is pending before the court of Civil Judge (Junior Division), Haridwar. This writ petition was filed earlier than that of filing of aforesaid Civil Suit. At the request of the learned counsel for the petitioner and to avoid the multiplicity of the proceedings, the aforesaid Civil Suit was withdrawn from the court of Civil Judge (Jr.Division), Hardwar and summoned under Section 24 of the Civil Procedure Code. The decision in the writ petition will also decide the issues raised in civil suit.

11. I have heard the learned counsel for the parties and perused the material on record. The learned counsel for the petitioner contended that the respondent No.1/Prescribed Authority passed the order illegally and arbitrary and against the byelaws of the Trust because the respondent Nos. 5 & 6 had no power to call the meeting in view of Clause 8 (Ya) of the Byelaws of the

Trust Society. Therefore, the meeting as well as the appointment of Sri Virendra Kirtipal and Sri Ashok Kumar Tumbariya (respondent Nos. 3 & 4 respectively) is contrary to the byelaws. The respondent No.2/Assistant Registrar, Societies has categorically recorded his finding that the respondent No.5 has no authority to call the meeting as provided under the byelaws. It has further been recorded by the respondent No.2 that as per byelaws only legal heir of the Trustee can be appointed as Trustee of the aforesaid Society and in the instant case the respondent Nos. 3 & 4 are not legal heir of Sri Som Dutt Kirtippal and Sri Krishan Kumar Mishra (earlier trustees). Therefore the appointment of respondent Nos. 3 & 4, who were nominated as members of the Trust by majority in the so-called meeting of 4.6.2001, are illegal, arbitrary and against the byelaws. English translation of Clause 8*(YA)* of the Byelaws of the said Society is given as under:-

> **8 (Ya). Fill in the gap etc.**- That fill in the gap of a member of the Trust Society will be filled by the legal heir of the Trust Society. If any legal heir of the member of Trust Society is not found competent tobe appointed as member then in his place the remaining trustee can appoint any competent person as Trustee in the Society. On falling the posts of office bearers of the Trust Society vacant, it can be filled from amongst the Trustees.

12. The meeting of the Society in which respondent Nos. 3 & 4 were nominated as members of the Trust Society was held on 04.06.2001 while Clause 8*(Ba)* of the Byelaws of the Trust Society provides that

the general meeting of the Society will be held on the occasion of *Shivratri* every year but special meeting can be convened by the Secretary of the Trust on the approval of President time to time. English translation of Clause 8*(Ba)* of the Byelaws of the Society is given below:-

> **8(*Ba*). Meetings**- That the general meetings of the Trust will be held on the occasion of the *Shivratri* but special meetings can be convened time to time by the Secretary of the Trust on the approval of the President to conduct the proceedings of the Trust smoothly.

13. It is clear from the record that the respondent Nos. 3 & 4 are not the legal heirs of Sri Som Dutt Kirtipal and Krishna Kumar Mishra (earlier trustees). On 04.06.2001 when the alleged meeting was held was also not *Shivratri.* The respondent No.2/Assistant Registrar rightly recorded his findings that the respondent No.5 has no authority to convene the meeting as provided under the byelaws. The meeting held on 04.06.2001 as well as the nomination of respondent Nos. 3 & 4 as members of the Trust are against the provisions of Clause 8*(Ya)* and *(Ba)* of the Byelaws of the Trust Society.

14. On the contrary it is revealed from the record that the Secretary of the Society has convened a meeting in accordance with rule on 04.03.2000 in which name of petitioner and Sudhanshu Mishra were proposed for trustees of the Society and by majority they became trustees of the Society. The nomination of the petitioner

and Sudhanshu Mishra was duly approved by the management on 21.2.2001 and the respondent No.2/Assistant Registrar was also intimated about their appointment as Trustees. Photostat copies of the **'PANCHANG'** filed by the learned counsel for the petitioner alongwith the written submissions show that on both the aforesaid dates i.e. 04.03.2000 and 21.02.2001 was *Shivratri.*

15. The finding recorded by the respondent No.1/Prescribed Authority that the appointment of the petitioner is invalid, as the father of the petitioner has tried to grab the property of the trust is contrary to the byelaws and without any evidence. This finding recorded by the Prescribed Authority is liable to be quashed. All the 7 members have approved the appointment of the petitioner as trustee on 4.3.2000 because he is legal heir of earlier member/President-Som Dutt Kirtipal and the said proposal was confirmed by the management in the next meeting which was held on 21.2.2001 on the day of *Shivratri.*

16. Sri Alok Singh learned counsel for the respondent No.5 argued that the writ petition under Article 227 of the Constitution of India is not maintainable against order of Prescribed Authority under Section 25 of the Societies Registration Act. He further submitted that the Prescribed Authority does not fall within the supervisory jurisdiction of this Court. Moreover, judgment of the Prescribed Authority could be challenged by way of filing civil suit. The argument of the learned counsel for the respondent has no force. It has been provided under Article 227 that the High Court can exercise the powers against the order of court and

tribunal. The learned counsel for the petitioner relied in the case **Kihoto Hollohan versus Zachillhu and others,** reported in **1992 Supp.(2) Supreme Court Cases, 651,** in which in Para 98 and Para 99, the Apex Court held as under:-

> "**98.** But then is the Speaker or the Chairman acting under Paragraph 6(1) a Tribuanl? "All tribunals are not couts, though all courts are tribunals". The word "courts" is used to designate those tribunals which are set up in an organized State for the Administration of Justice. By Administration of Justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, the courts are there to restore the vinculum juris, which is disturbed. (*See Harinagar Sugar Mills Ltd v. Shyam Sundar Jhunjhunwala, (1962) 2 (SCR 339).* In that case Hidyayatullah, J. said: (SCR p. 362)
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> > *".....By 'courts' is meant courts of civil judicature and by 'tribunals', those bodies of men who are appointed to decide controversies arising under certain special law Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunal, and the residue goes before the ordinary courts of civil judicature. The procedures may differ but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is that the courts have 'an air of detachment'. But this is more a matter of age and tradition and is not*

of the essence. Many tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient."

99. Where there is a lis – an affirmation by one party and denial by another – and the dispute necessarily involves a decision on the rights and obligations of the parties to it and the authority is called upon to decide it, there is an exercise of judicial power. That authority is called a Tribunal, if it does not have all the trappings of a Court. In Associated Cement Companies Ltd. v. P.N. Sharma [(1965) 2 SCR 366] this Court said: (SCR pp.386-87)

".....The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under Rule 6(5) and Rule 6(6) is a part of the State's judicial power .....There is, in that sense, a lis; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding."

17. Therefore, the aforesaid argument advanced by the learned counsel for the respondent No.5 has also no force and it is held that the writ petition is maintainable.

18. In view of the discussion made in the foregoing paragraphs, the writ petition is allowed. The order impugned passed by the respondent No.1/Prescribed

Authority is quashed. The appointment of the petitioner as trustee of the Society is held valid.

19. Since the writ petition is allowed, therefore Original Suit No. 138 of 2002, which was summoned under Section 24 of the C.P.C., is sent back to the court of Civil Judge (Junior Division), Hardwar for decision in the light of this judgment.

(P.C. Verma,J.)

Date: March 7,2006
P.Singh